

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B1
PLR-135185-07
Date: 01/08/2008

Legend:

X =

A =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This letter responds to your letter dated July 26, 2007, requesting inadvertent termination relief under section 1362(f) of the Internal Revenue Code.

Facts:

You have represented that the facts are as follows. X is a corporation formed in State on Date 1. On Date 2, X filed an election to be taxed as an S corporation for federal tax purposes. On Date 3, X converted to State limited partnership in a transaction that was treated as a reorganization under § 368(a)(1)(F). This conversion may have created a

second class of stock. Additionally, X intended that the limited partnership would be classified as an association taxable as a corporation. However, due to inadvertence, no Form 8832, Entity Classification Election, was filed.

Also on Date 3, X's S corporation election was terminated when A, an ineligible corporate shareholder, became the general partner of the limited partnership. However, no income was ever allocated to A, and no distributions were ever made to A.

The following two remedial actions were taken on Date 4. First, X was converted from a State limited partnership back into a State corporation. Additionally, A divested itself of all of its interests in X.

X represents that it was unaware that the conversion to a limited partnership and the admission of A as a general partner could cause its S corporation election to terminate. X represents that it did not intend to terminate its S corporation election and that it has consistently filed its tax returns consistent with its treatment as an S corporation. X and its shareholders have agreed to make such adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary.

Law and Analysis:

Section 1361(a)(1) defines an S corporation as a "small business corporation" for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1)(B) provides that a "small business corporation" cannot have as a shareholder a person (other than an estate and other than a trust described in § 1361(c)(2) or an organization described in § 1361(c)(6)) who is not an individual.

Section 1361(b)(1)(D) provides that, for purposes of subchapter S, the term "small business corporation" means a domestic corporation that is not an ineligible corporation and that does not, among other things, have more than one class of stock.

Section 1362(d)(2) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the taxable year for which a corporation is an S corporation) such corporation ceases to be a small business corporation. A termination of an S corporation election under § 1362(d)(2) is effective on and after the date of cessation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation was terminated under paragraph (2) or (3) of § 1362(d), (2) the Secretary determines that the circumstances resulting in such termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in such termination, steps were taken so that the corporation is a small business corporation, and (4) the corporation, and each person who was a shareholder of the corporation at

any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Conclusion:

Based solely on the facts represented, we conclude that X's S corporation election was terminated on Date 3, when A, an ineligible shareholder, acquired an interest in X. We also conclude that this termination was inadvertent within the meaning of § 1362(f). In addition, if X's conversion from a State corporation to a State limited partnership did create a second class of stock, the consequent termination of X's S corporation election was inadvertent within the meaning of § 1362(f).

Therefore, we conclude that X will continue to be treated as an S corporation for the period from Date 3 and thereafter, provided that X's S corporation election was valid and provided that the election was not otherwise terminated under § 1362(d).

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the above-described facts under any other provision of the Code. In particular, no opinion is expressed or implied concerning whether X's S corporation election was valid under § 1362.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

/s/

Dianna K. Miosi
Chief, Branch 1
Office of Associate Chief Counsel
Passthroughs & Special Industries

Enclosures (2)

Copy of this letter

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